

Billard



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

MATTER OF: Reservists and National Guard Members -
Military Leave - Salary Offset

FILE: B-237783

DATE: October 1, 1990

DIGEST

Where a statute specifically refers by section number to another statute, they are interpreted as of the time of adoption, without subsequent amendments, in the absence of a contrary legislative intent. Therefore, under the current code, the salary offset provision in 5 U.S.C. § 5519 (1988) applies to amounts received by reservists and national guardsmen while on military leave to enforce the law under 5 U.S.C. § 6323(b) (1988), but salary offset does not apply to leave under 5 U.S.C. § 6323(c) (1988) for District of Columbia National Guardsmen ordered or authorized to serve in parades or encampments even though section 5519 literally refers to section 6323(c).

DECISION

Federal employees who are members of the Reserves of the Uniformed Services or members of the National Guard have long been entitled to specified periods of leave from their civilian employment when called to active duty for training and for certain other kinds of active duty. While on such leave they are entitled to both their military pay and their civilian salary without offset or reduction. In 1968 a statute was enacted to provide federal employees an additional 22 days of military leave if they are called to active duty to provide aid "to enforce the law." For this type of military leave, however, a setoff of military pay was required against the person's civilian pay for the period of leave.

Subsequently, the military leave statute, 5 U.S.C. § 6323 (1988), was amended on several occasions, without conforming amendments to the statute providing the salary offset, 5 U.S.C. § 5519 (1988). Thus, reading the current statutes literally it appears that the setoff applies only to military leave for service of District of Columbia National Guardsmen on duty for parades and encampments and not to leave for aid in law enforcement. Thus, the question arises

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as to whether the offset statute should be applied literally or in accordance with its original intent.^{1/} We reach the latter conclusion, that it should be applied to leave to enforce the law, not to leave for District of Columbia National Guardsmen on duty for parades and encampments.

BACKGROUND

Before enactment of Public Law 90-588,^{2/} section 6323 of title 5 of the United States Code contained subsections (a) and (b), which provided military leave without loss of pay for specified periods for active duty and certain training for reservists and national guardsmen who are federal employees, generally, and substitute employees in the postal field service, respectively. Public Law 90-588 added new subsections (c) and (d) providing additional leave for such employees when they perform certain military duty providing "aid to enforce the law." Section 6323(c) and (d) provided that such leave was to be without loss of or reduction in pay "except as provided by section 5519." Public Law 90-588 also added section 5519 requiring that amounts received for military service while on leave "under section 6323(c) or (d)" be credited against the employee's civilian pay.

Five days after Public Law 90-588 was enacted, Public Law 90-623 was enacted, adding a provision to section 6323 authorizing leave for employees who are D.C. National Guardsmen for service for "parades" and "encampments," when ordered or authorized under the District of Columbia Code.^{3/} This provision was a reenactment of a similar provision which had been a part of the D.C. Code, but had been repealed. Neither the newly enacted provision nor its predecessor in the D.C. Code contained a salary offset provision, nor did the new provision refer to section 5519. This provision, however, was inadvertently enacted as a second subsection (c) of section 6323.^{4/}

^{1/} The question was presented by the Office of Civilian Personnel Management, Department of the Navy.

^{2/} Pub. L. No. 90-588, § 2(a) and (b), 82 Stat. 1151, 1152, Oct. 17, 1968.

^{3/} Pub. L. No. 90-623, § 1(17), 82 Stat. 1313, Oct. 22, 1968.

^{4/} We have recognized that the designation of two subsection (c)'s was the result of inadvertence. B-189002, Feb. 8, 1978.

In 1970, the Postal Reorganization Act deleted subsections (b) and (d) of section 6323 relating to postal substitute employees.^{5/} This left section 6323 with subsection (a) and two subsections (c) until 1979 when Public Law 96-54 redesignated the first subsection (c) as subsection (b).^{6/}

Section 5519 of title 5 was left unchanged, literally applying to subsections "(c) or (d)" of section 6323. This raises the question whether salary offset applies to amounts received by reservists and guardsmen on leave to enforce the law (subsection (b)) and to D.C. National Guardsmen's service for parades or encampments (subsection (c)).

OPINION

It appears that the reference in section 5519 to "section 6323(c) or (d)" remains as the result of a technical oversight. Therefore, on the basis of the statutory history and legislative purpose of these statutes, we conclude that section 5519 should not be interpreted literally, but should be construed in accordance with its original purpose to apply to military leave to aid in law enforcement, currently covered by subsection (b), not to current subsection (c) of section 6323 nor to subsection (d) which has been repealed.

As enacted in 1968, section 5519 and subsections (c) and (d) of section 6323 were specific reference statutes in that each section referred specifically to the other by section number. A principle of statutory construction applicable to reference statutes provides that such statutes incorporate the provisions referred to as of the time of adoption without subsequent amendments, unless the legislature has expressly or by strong implication shown its intention otherwise. See Sutherland, Statutory Construction, § 51.08 (4th Ed., 1985).


As discussed above, at the time these statutes were mutually adopted, subsections (c) and (d) of section 6323 provided employees and postal substitutes leave for reserve or national guard service to aid in law enforcement, subject to salary offset under section 5519. In the legislative history of the subsequent amendments discussed above there

5/ Pub. L. No. 91-375, § 6(c)(18), 84 Stat. 776, Aug. 12, 1970. The Postal Reorganization Act established a separate personnel system for the Postal Service outside the purview of many of the provisions of title 5, U.S. Code. See B-70371, Jan. 22, 1976; and 51 Comp. Gen. 395 (1972).

6/ Pub. L. No. 96-54, § 2, 93 Stat. 381, Aug. 14, 1979.

is no indication of an intent to make a substantive change in that regard. Therefore, the amendment redesignating the original subsection (c) as (b) should not be construed as excepting from salary offset amounts received by reservists and guardsmen on leave to enforce the law.

As to current section 6323(c), it authorizes leave for D.C. National Guardsmen performing service for parades or encampments, and is a substantial reenactment of former section 608 of title 39 of the District of Columbia Code which did not provide for or refer to another statute providing for salary offset. See 60 Comp. Gen. 381 (1981). We believe that if Congress intended to have salary offset apply to amounts received by D.C. National Guardsmen for service during a parade or encampment ordered or authorized under title 39, D.C. Code, it would have drafted current section 6323(c) to refer to section 5519 or at least so stated in the legislative history, which it did not. Thus, it seems clear that leave under current section 6323(c) was not intended to be subject to salary offset under section 5519 and should not be so construed.7/

for 
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7/ In an FPM Letter, OPM stated that 5 U.S.C. § 5519 provides for offsets from amounts received during leave under both subsections (b) and (c) of section 6323 as currently codified. Answer to Question No. 17 in FPM Letter 630-30, Apr. 23, 1982. However, by letter of April 3, 1990, OPM advised that it now believes that the salary offset provisions of 5 U.S.C. § 5519 do not apply to D.C. National Guardsmen under the circumstances described in 5 U.S.C. § 6323(c).